LIBRARY
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

October Term, 1952

No. 10, ORIGINAL

STATE OF ARIZONA,

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

UNITED STATES OF AMERICA, INTERVENER.

STATE OF NEVADA, INTERVENER.

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission
BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission
PERRY M. LING
Special Counsel,
Arizona Interstate Stream Commission
ROSS F. JONES
Attorney General of Arizona
HOWARD F. THOMPSON
Special Assistant Attorney General of Arizona

ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA.

IN THE

Supreme Court of the United States

October Term, 1953

No. 10, ORIGINAL

STATE OF ARIZONA,

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

UNITED STATES OF AMERICA, INTERVENER.

STATE OF NEVADA, INTERVENER.

ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA.

COMES now the State of Arizona, Complainant above named, and for its Answer to the Petition of Intervention on behalf of the State of Nevada says:

FIRST AFFIRMATIVE DEFENSE:

NEVADA IS ENTITLED TO THE ANNUAL DELIVERY OF NOT TO EXCEED 300,000 ACRE-FEET OF WATER FROM THE COLORADO RIVER SYSTEM IN ACCORDANCE WITH ITS CONTRACT OF JANUARY 3, 1944 WITH THE UNITED STATES.

1.

None of the parties to this cause has questioned the allocation to the State of Nevada of the beneficial consumptive use of 300,000 acre-feet of Colorado River System water as provided by the January 3, 1944 amendment of the March 30, 1942 contract between the United States of America and the State of Nevada.

2.

Section 5 of the Boulder Canyon Project Act (45 Stat. 1057) authorizes the Secretary of the Interior to contract for the storage of water in and delivery of water from the reservoir created by the dam authorized for construction by said Act and provides that:

> "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

3.

Paragraph 4 of the January 3, 1944 contract between the United States of America and the State of Nevada provides:

> "Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water, including all other waters diverted for use within the State of Nevada from the Colorado River System, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power."

4.

The State of Nevada in its Motion for Leave to Intervene and in its tendered Petition of Intervention fails to allege that (a) it has or can obtain any contract from the United States of America for any greater quantity of water than that referred to in the aforementioned January 3, 1944 contract, and (b) that there is physically available for use within the State of Nevada any quantity of Colorado River System water, other than that possibly available from Lake Mead Storage, in excess of the 300,000 acre-feet referred to in said January 3, 1944 contract.

5.

The State of Nevada fails to allege that it has any fixed, definite plans for the use, within any reasonable time, of any greater quantity of Colorado River System water than that referred to in the said January 3, 1944 contract.

* * *

SECOND AFFIRMATIVE DEFENSE

COMPLAINANT HAS THE RIGHT TO THE BENFICIAL CONSUMPTIVE USE OF 2,800,000 ACRE-FEET PER ANNUM OF WATERS DELIVERED FROM STORAGE IN LAKE MEAD UNDER ITS CONTRACT WITH THE UNITED STATES DATED FEBRUARY 9, 1944.

1.

Paragraph 7 (a) of the February 9, 1944 contract between Arizona and the United States reads as follows:

"Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet."

Complainant refers to Exhibit "C" to the Bill of Complaint herein for the entire text of such contract.

2.

Prior to the execution of such contract Nevada approved and recommended the same and is now estopped to deny the validity or provisions thereof.

* * *

TRAVERSE

1.

Answering Paragraph I of said petition, Complainant admits the allegations of said paragraph except that with respect to the allegations of the last unnumbered sub-paragraph thereof, alleges that Complainant does not have sufficient knowledge or information to form a belief as to the truth thereof, and further alleges that such allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

2.

Complainant deems that the allegations contained in Paragraph II do not require any answer.

3.

Answering Paragraph III of said petition Complainant admits the allegations thereof except the allegation that Nevada is an indispensable party to this suit, which allegation Complainant expressly denies.

4.

Answering Paragraph IV Complainant admits that Nevada is a signatory state to the Colorado River Compact dated November 24, 1922 and a member state of the Lower Basin thereunder. Complainant alleges that the share of the waters to which Nevada is entitled is as set forth by the January 3, 1944 amendment of the March 30, 1942 contract between the United States and Nevada, and Complainant refers to and incorporates herein its First Affirmative Defense in this Answer. Complainant admits the allegations of the last sentence of Paragraph IV.

5.

Answering Paragraph V, Complainant admits the allegations thereof except the allegation that the State of Nevada has the right to the beneficial consumptive use of water under Article III (a) of the Compact of 539,100 acre-feet for present and future agricultural and domestic uses, which allegation Complainant denies and refers to and incorporates herein its First Affirmative Defense in this Answer.

6.

(a) Answering Paragraph VI (a) of said Petition, Complainant admits the allegations of the first sentence thereof. Complainant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said Paragraph VI (a), and therefore denies the same, and alleges that said

allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

(b) Answering Paragraph VI (b), Complainant alleges that it is without knowledge or information sufficient to form a belief as to either of the allegations thereof and therefore denies the same, and alleges that said allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

(c) Answering Paragraph VI (c) of said Petition, Complainant admits that the present uses set forth in the table therein contained are substantially correct, Complainant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said Paragraph VI (c), including the tabulations appearing therein, to form a belief as to the truth thereof, and therefore denies the same and alleges that said allegations are immaterial and irrelevant to any consideration or determination of the issues in this case.

7.

Answering Paragraph VII of said Petition, Complainant admits that the Defendants herein are presently claiming the right to the use of at least 5,362,000 acre-feet of water per annum, but denies the right of Defendants to use such quantity of water or any portion thereof except as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and this Answer; and admits that Complainant State of Arizona is presently claiming the right to the annual beneficial consumptive use of not less than 3,800,000 acre-feet of waters of the Colorado River System. Complainant concedes that Nevada has the right to the use of 300,000 acre-feet of said

waters per annum, but alleges that said right is as set forth in and limited by the contract between the United States and Nevada. Complainant refers to and incorporates herein its First Affirmative Defense in this Answer. Complainant denies all the allegations of Paragraph VII not heretofore expressly admitted.

8.

Answering Paragraph VIII of said Petition, Complainant admits the first sentence thereof, and alleges that the effect of Articles III (a) and III (b) of the Colorado River Compact are as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer to the United States Petition of Intervention, and in this Answer. Complainant denies all of the allegations of Paragraph VIII not heretofore expressly admitted.

9.

Answering Paragraph IX of said Petition, Complainant admits the allegations thereof.

10.

Answering Paragraph X of said Petition, Complainant admits the allegations thereof, but alleges that the interpretation and construction of the documents referred to therein are as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and in this Answer.

11.

Answering Paragraph XI of said Petition, Complainant admits the allegations thereof, but alleges that the construction and interpretation of the documents referred to therein are as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer,

Complainant's Answer to the United States Petition of Intervention, and in this Answer. Complainant further alleges that although no formal compact was ever entered into among the States of Arizona, California and Nevada, pursuant to provisions of Section 4 (a) of the Boulder Canyon Project Act, said States accepted and approved the apportionment suggested therein by entering into their various contracts with the United States of America for the use of waters of the Colorado River System, and said States are now estopped and precluded from denying the legal effect of such apportionment. Section 5 of the Boulder Canyon Project Act, among other things, provides:

> "Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to Paragraph (a) of Section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

12.

Answering Paragraph XII of said Petition, Complainant denies the allegations of the second sentence of the first unnumbered sub-paragraph thereof, and alleges that the rights of Nevada to the beneficial consumptive use of waters of the Colorado River System are as set forth in and limited by its contract with the United States, and Complainant refers to and incorporates herein its First Affirmative Defense in this Answer.

Complainant alleges that the allegations in the second unnumbered sub-paragraph of Paragraph XII are immaterial and irrelevant to any consideration or determination of the issues in this case.

13.

Answering Paragraph XIII of said Petition, Complainant denies all of the allegations thereof except as they conform to the allegations of the Bill of Complaint, Complainant's Reply to the Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and this Answer.

14.

Answering Paragraph XIV of said Petition, Complainant denies the allegations thereof except such as conform to the allegations of the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to the United States Petition of Intervention, and this Answer.

15.

Answering Paragraph XV of said Petition, Complainant alleges that the manner in which uses of Colorado River System water by Indians and Indian tribes is charged is immaterial and irrelevant to any consideration or determination of the issues in this case.

16.

Answering Paragraph XVI of said Petition, the Complainant denies the allegations thereof except such as conform to the allegations in the Bill of Complaint, Complainant's Reply to Defendants' Answer, Complainant's Answer to United States Petition of Intervention, and this Answer.

17.

Complainant deems that Paragraph XVII of said Petition does not require any answer.

18.

Answering Sub-paragraph 1 of Paragraph XVIII, of said Petition, Complainant admits that the waters apportioned by Article III (b) of the Colorado River Compact do not constitute surplus or excess water within the meaning of the Colorado River Compact or the Boulder Canyon Project Act. Complainant denies the remaining allegations of Sub-paragraph 1.

Answering Sub-paragraph 2 of Paragraph XVIII of said Petition, Complainant admits the allegations thereof.

Answering Sub-paragraph 3 of Paragraph XVIII of said Petition, Complainant alleges that evaporation losses from main-stream reservoirs in the Lower Basin are to be charged as set forth in the Bill of Complaint, Complainant's Reply to Defendants' Answer, and Complainant's answer to the United States Petition of Intervention.

19.

Answering Paragraph XIX of said Petition, Complainant alleges that the apportionment among Arizona, California and Nevada proposed by Congress in Section 4 (a) of the Boulder Canyon Project Act is fair, equitable and just as to each of said states.

20.

Answering Paragraph XX of said Petition, Complainant denies that California is entitled to an equitable share or any share of the waters apportioned by Article III (b) of the Colorado River Compact and alleges that the rights of California are as set forth in and limited by the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act.

21.

Answering Paragraph XXI of said Petition, Complainant denies that the economic interests of Nevada, Utah or New Mexico are vitally affected by the controversy between Arizona and California.

22.

Complainant deems that Paragraph XXII of said Petition does not require any answer.

23.

Answering Paragraph XXIII of said Petition, Complainant admits the allegations thereof, but alleges that there is no controversy involving Nevada, Utah or New Mexico which requires adjudication by this Court.

24.

Answering Paragraph XXIV of said Petition, Complainant denies that California is entitled to an equitable share or any share of the waters apportioned by Article III (b) of the Colorado River Compact, and alleges that the rights of California are as set forth and limited by the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act.

25.

Answering Paragraph XXV of said Petition, Complainant admits the allegations thereof.

26.

Complainant does not deem that Paragraph XXVI of said Petition requires any answer.

27.

Complainant denies each and every affirmative allegation of the Nevada Petition of Intervention not specifically admitted in this Answer.

WHEREFORE, Complainant prays as in its Complaint and Reply to the Answer of the Defendants.

JOHN H. MOEUR,
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER,
Assistant Counsel,
Arizona Interstate Stream Commission

PERRY M. LING,
Special Counsel,
Arizona Interstate Stream Commission

ROSS F. JONES,
Attorney General of Arizona

HOWARD F. THOMPSON,
Special Assistant to the Attorney General of Arizona